

A US Driven Security Agenda? EU Actorness in Counter-terrorism Co-operation with the US

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Abstract:

It has been well documented that EU-US counter-terrorism co-operation has flourished in recent years. Prior to 9/11, the EU was in no way a counter-terrorism actor, but this event ensured increasing EU involvement in counter-terrorism - and the US played a particularly important role in the EU's emergence into this field. The US frequently exerted pressure on the EU to adopt its security agenda, and while the EU has certainly adopted some policies that originated in the US, it has proved more resistant on other issues. What has been less well documented - and what this article will explore - is the level of actorness displayed by the EU in co-operation with the US. The significance of the EU as a counter-terrorism actor when in co-operation with the US will be demonstrated through the use of Jupille and Caporaso's (1998) criteria for actorness: recognition, authority, autonomy, and cohesion. Institutional changes under the Treaty of Lisbon are another factor that must be taken into account because they have the potential to enhance the actorness of the EU in counter-terrorism. In particular, the growing power of the European Parliament (EP) and its role in the SWIFT Agreement may prove to be indicative of the future stance of that institution towards the US.

Introduction:

In the aftermath of 9/11, the EU's relationship with the US was transformed from an important trading relationship with embryonic security concerns (enshrined in the Transatlantic Declaration of 1990 and the New Transatlantic Agenda (NTA) of 1995) into an increasingly important security partnership. By 2011, agreements between the EU and US had broadened to counter-terrorism financing, intelligence sharing, and transport and trade security. As well as formal agreements, dialogues sprung up between the two actors. International terrorism - and particularly 9/11 - provided the catalyst for this huge escalation in co-operation.

In brief, the EU-US relationship is the most important to both sides of the Atlantic. The EU has long strived to be treated as an equal by the US on security matters, and the US has long waited for the EU to take a stronger role in world affairs (Rees 2006). In short, '[t]he US regarded the EU as its most important potential collaborator, but only when the Union was ready to assume this mantle' (Rees 2006, p.43). Thus the period after 9/11 gave the US an opportunity to help accelerate the evolving security role of the EU.

Despite the deepening of co-operation since 2001, the transatlantic relationship has been through some turbulent times, and the invasion of Iraq (2002-2003) proved to be particularly contentious. Even so, co-operation at lower levels has continued apace with EU member states and the US actually deepening intelligence and police co-operation during this period (Occhipinti 2010; Townsend 2003). However, according to Argomaniz (2009, p.120), the EU-US relationship is asymmetrical due to the structural imbalances that exist between

the two actors and, as a result of their respective natures, the EU has had to adopt responses to terrorism that 'did not fit easily with the European threat perceptions and strategy of response'. Examples of this include the Passenger Name Record agreement and Container Security Initiative (CSI) (Argomaniz 2009; Rees 2006). In this regard, there can be little doubt that the EU has had to adopt security practices and counter-terrorism measures that have been literally 'made in the USA' (Pawlak 2009a) – PNR (Argomaniz, 2009), where European data protection standards were not upheld in the face of US pressure, are demonstrative of this. Furthermore, some authors have argued that EU member states have been willing to outsource their security to the US for practices that they could not legally or practically do themselves (Aldrich 2009; Argomaniz 2009). Member states have thus proved themselves to concern themselves with security – regardless of data protection and other concerns in the agreements. However, a recent case – the SWIFT (Society for Worldwide Interbank Financial Telecommunication) agreement – has seen the European Parliament (EP) act against the will of some of its member states and the US by rejecting the agreement at first reading.

Crucially, with the Treaty of Lisbon coming into force in December 2009, the EP gained an expanded consent over some areas of security policy. While the US may still be able to coerce the EU to accept the security policies it initiated, the SWIFT Agreement proved more difficult for the US to pass through the EU. Perhaps this is indicative of the stance that the EP will attempt to take in future agreements with the US.

This paper will contribute to filling a gap identified by Kaunert (2010b, p.49), who considers that although the EU's relations with the US regarding counter-terrorism have received unprecedented attention since 2001, 'the question of actorhood of the EU in the external relations of counter-terrorism has been crucially under-researched'. Thus, this article will examine the actorhood of the EU in counter-terrorism.

This paper is structured in two main sections. The paper will first set out Jupille and Caporaso's (1998) criteria for actorhood. Secondly, the paper will apply Jupille and Caporaso's criteria to the EU when in counter-terrorism co-operation with the US in order to establish the EU's level of actorhood. In short, it will be argued that the EU of 2001 pales into insignificance compared to its importance as an interlocutor to the US in 2011. With this in mind, it is the evolution that the EU has gone through since 9/11 that is particularly important here (MacKenzie 2010). If the evidence of the SWIFT Agreement is to be taken into account, the EU is signalling an intention to be a more active and perhaps critical interlocutor of the US.

1) Establishing EU Counter-terrorism Actorness:

The EU is often viewed as a *sui generis* actor (Bretherton & Vogler 2006; Hill & Smith 2005). In other words, the EU is a one-off and individual type of actor. This is not to avoid criticism; it is to recognise the difficulties inherent in conceptualising an actor as complex as the EU. Because the EU does not have access to all the competences of a state, it cannot be assumed that the EU is, or should be, a counter-terrorism actor. In consequence, it appears prudent to first all establish the level of actorness that the EU exhibits in counter-terrorism.

Actorness means that the EU 'is an international actor in some areas but not in others' (Ginsberg 1999, p.432). The most evident deficiency is the lack of an EU military arm. Although the EU does not have this option, it does not necessarily restrain the EU as a counter-terrorism actor. For instance, while assessing the EU's overall impact on world affairs Bretherton and Vogler (2006, p.9) found that: '[w]hile a number of interviewees commented upon the lack of overall political direction and impetus to external policy, the absence of military capability was not identified as an issue by any of the third party representatives interviewed - all of whom nevertheless considered the EU to be a significant actor'. Therefore, in this sense, the EU must be studied as an actor by focusing on what it can do rather than on what it cannot.

Actorness is a valuable contribution to EU literature because it avoids the potential pitfalls of alternative approaches to international relations. For instance, according to Bretherton and Vogler (2006), state-based approaches to international relations lead to the false conclusion that the EU is not an international actor of note because they focus on the areas where the EU is least effective, has fewer competences, and ignores all that is distinctive about the EU and what it can do. Thus, actorness provides an important and interesting framework for analysis.

In general, EU counter-terrorism literature perceives the EU as a weak or insignificant counter-terrorism actor. Within Europe, the EU has been seen as a 'paper tiger' (Bures 2006), while outside of Europe the EU has been seen as an 'Absent Friend' (Keohane 2008). However, both Bures and Keohane have not shown that the EU is probably the most active actor of its kind. What other supranational organisation has such wide-ranging competences in areas related to security and has been so active in counter-terrorism? Furthermore, Keohane's view of EU external co-operation is narrow and fails to take account of the EU-US relationship almost completely. In contrast to Keohane, Kaunert (2010b) recognises the significance of the EU-US relationship and the agreements therein.

Only one author (Beyer 2008) looks at EU counter-terrorism actorness, and she examines the EU in general, not as a counter-terrorism actor when in co-operation with other countries. By applying Bretherton and Vogler's (2006)

criteria for actorness¹ in the case of counter-terrorism, Beyer (2008, p.314) comes to the conclusion that 'the European Union can be termed an actor within the security field of counter-terrorism, although it is still a weak actor'. Overall, this may be the case, but it is worth pointing out that the EU actorness will vary depending on the counter-terrorism interlocutor in question. The importance of the EU-US relationship has been demonstrated in a number of sources (Aldrich 2009; Argomaniz 2009; Kaunert 2010a; 2010b; Occhipinti 2010; Rees & Aldrich 2005; Rees 2006; 2008). In this regard, it is again worth noting again that in 2001 the EU had almost no role in counter-terrorism, yet in the ten years since then it has only become significantly more active.

Jupille and Caporaso's Criteria for Actorness:

Jupille and Caporaso's four criteria for actorness are: recognition, authority, autonomy, and cohesion. Recognition is simply that the EU is accepted, and interacted with, by external actors in areas relevant to counter-terrorism - particularly with regard to formal agreements and dialogues. Recognition itself means little; it is a 'minimum condition that adds little substantive understanding of any given entity, but simply registers it on the analytic radar' (Jupille & Caporaso 1998, pp.214-5). Jupille and Caporaso also see this as a process of socialisation in which the EU comes to be accepted as acting in a given policy area. Authority is literally the legal authority to act - whether the EU has sole authority as set out in the Treaties, or whether it is delegated the authority to act by its member states. In this sense, it is where the EU has authority to interact with third countries in areas relevant to counter-terrorism. Autonomy is the EU's internal and external autonomy in terms of institutional distinctiveness from its member states on the one hand and decision and policy-making independence from external actors on the other (in this case the US). In this case, it is the susceptibility of the EU to its member states influences, as well as the symmetry (in terms of influence) in the EU-US relationship. For this paper, cohesion is the level of consensus of the EU member states and institutions towards the US².

By examining the EU in this way, it will be shown that the EU now has a much enhanced level of actorness in counter-terrorism than in 2001. Various agreements will be used throughout this section to highlight actorness. In the case of PNR, Argomaniz (2009) argues that the EU adopted the role of 'norm-taker'. This asymmetry may still exist - and certainly did prior to the Treaty of Lisbon -, but Lisbon saw the emergence of the EP as a security actor. The EU-US SWIFT Agreement appeared to present the EU as a much more assertive actor in the second negotiation process. Also, the US' position changed from a coercive posture towards the EP to a more encouraging stance. It is possible that the US

¹ Consult Bretherton and Vogler for a full treatment of their criteria for actorness.

² Jupille and Caporaso set forth four types of cohesion: value (goal), tactical, procedural, and output.

acknowledged that it cannot necessarily 'bully' the EU into accepting its security policies. Based on this evidence, Lisbon could be a key event in establishing the EU as a more important counter-terrorism actor – in particular in co-operation with the US.

2) Applying Actorness to EU-US Counter-Terrorism Co-operation:

I) Recognition:

This section will now examine how and why the EU is recognised by the US as a counter-terrorism actor.

In what ways is the EU Recognised as a Counter-terrorism Actor?

Although diplomatic relations between the EU and US were established in 1953 on an informal level, counter-terrorism co-operation did not become an issue in transatlantic co-operation until the post-Cold War period (EU External Action Service Website 2010). Prior to 9/11, the only references to counter-terrorism co-operation that existed between the EU and US lay in vague statements in the Transatlantic Declaration³ and the NTA. In 1990, it was stated that the EC, its member states, and the US would 'join their efforts' in 'combating and preventing terrorism' (European Community and the United States of America 1990). Again, in 1995, under the heading 'Responding to global challenges', combating terrorism was seen as one of the major problems within this (The United States of America and the European Union 1995). These were vague and informal statements that allowed a lot of flexibility in the transatlantic relationship; however, they laid down little that could be considered concrete.

After 9/11, the embryonic nature of EU-US security co-operation was transformed. From then, co-operation has proliferated rapidly to encompass a broad range of policy areas. International terrorism thus offered a catalyst for security co-operation between the EU and US. With every agreement concerned with security and counter-terrorism, the EU has been *de jure* or legally recognised (Jupille & Caporaso 1998) as a partner in security issues by the only superpower. The EU is now legally recognised by the US in these agreements pertinent to counter-terrorism:

- Transatlantic Declaration (1990)
- NTA (1995)
- US-Europol (2001 and 2002)
- US-Eurojust (2006)
- Container Security Initiative (CSI) (2004)
- Mutual Legal Assistance (MLA) and Extradition treaties (2003)
- Passenger Name Record (PNR) agreement (2004, 2006, 2007, and 2011?)
- Society for Worldwide Interbank Financial Telecommunication (SWIFT)

³ Incidentally, the TD of 1990 formalised the EC-US relationship for the first time.

agreement (2010)

Clearly, these agreements represent significant steps forward for the EU. Despite this recognition of the EU as a security actor and partner of the US, recognition taken solely as a single criterion is simply an indicator of existence and empirically means very little. It is only substantive if the EU has the authority to engage with other actors; is autonomous from its interlocutors and member states; and is cohesive in its co-operation with the US.

A major issue in being recognised as a counter-terrorism actor is what a counter-terrorism actor does. In this sense, counter-terrorism itself is not a single defined policy area (Keohane 2005). Thus many different departments (of both the EU institutions and member states) are required to conduct a counter-terrorism policy – finance ministries to track suspicious transactions, health ministries should stockpile vaccines, and education ministries need to research Islamic groups (Lugna 2006, p.101). Thus, as a counter-terrorism actor, a vast array of areas of governance can be classed as counter-terrorism activity. With the US, the EU has been recognised in a range of agreements, several declarations, and in a number of dialogues. Therefore, in 2010, the EU is recognised as acting in a number of ways in counter-terrorism co-operation with the US.

Why is the EU Recognised as a Counter-terrorism Actor by the US?

The EU is recognised by the US for at least two interlinked reasons. Firstly, with an increasing number of policy areas moving towards the supranational level, the US is forced to interact through EU structures rather than with the member states – the PNR and SWIFT agreements dealing with data protection and financial data are examples of this. Secondly, the US finds it convenient to interact with the EU because it means that it does not have to go through drawn out negotiations with twenty-seven member states (Kaunert 2010b). This serves to bind all member states into an agreement. Overall, US Administrations have considered that the political benefits of engaging with the EU outweigh the risks to bilateral US relationships with EU member states (Archik 2010, p.13).

Even so, agreements, such as the MLA and Extradition treaties, took nearly seven years to be ratified by all twenty-seven member states - and only came into force in February 2010. There are also further complications; the possibility of rejection by EU institutions has loomed large over certain agreements (as with the involvement of the EP and European Court of Justice (ECJ) in PNR I, which will be explained later).⁴ Also, another problematic issue can frequently be rejection or disapproval of a certain agreement by member states (in this sense, the SWIFT Agreement and Germany, Austria, Hungary, and Greece's reluctance

⁴ Refer to (Argomaniz 2009) for a full treatment.

to accept it (Interview with Diplomatic source A, Brussels, July 2010; Monar 2010, p.145)). With all these matters taken into account, the EU can be cumbersome and agreements slow, but this is potentially a better option than negotiating separately with each member state.

The US has frequently tried to get the EU more involved in worldwide affairs, but it has frequently seen its advances rebuffed by an EU that has frequently been more internally focused on development and parochial security concerns (Rees 2006, pp.38, 41). In particular, the US wished to be involved in order to shape the direction of the EU's security policy (Rees 2006, p.37). 9/11 provided an opportunity for the US to enhance its co-operation with the EU.

The US has experienced both the advantages and disadvantages from its interaction with the EU, but it has made several agreements that recognise the EU in many areas pertinent to counter-terrorism. This recognition of the EU as a counter-terrorism actor (or a security actor more broadly) did not exist in any substantive way before 2001. Clearly, this enhanced recognition by the sole superpower is a matter of importance to the EU.

II) Authority:

There are many areas of co-operation between the EU and US on matters related to terrorism. This section will set out substantial areas of EU-US counter-terrorism co-operation.

Dialogues:

Two particularly important dialogues between the EU and US are the Justice Dialogue and the Policy Dialogue on Borders and Transport Security (PDBTS). The Justice Dialogue sprung up in 1998 on the heels of the NTA (Cameron 2008, p.135). This particular dialogue brings together the representatives of the US and the EU. Prior to 2001, these dialogues began to focus significantly on US border security. 9/11 gave a further reason for developing EU-US co-operation in this sphere. The Justice Dialogue occurs twice per EU Presidency at staff level until 2002, but since then it has been convened at ministerial level, which shows its increased importance since 2001. More specifically, the Justice Dialogue has played a role in developing the agreements on MLA and Extradition, as well as aiding liaison with Europol – and potentially Eurojust⁵ in future. Furthermore, data protection has been a frequent subject of discussion. Lastly, the Justice Dialogue has been important because it has succeeded in identifying areas of disagreement and working towards a solution before a serious dispute arises (Cameron 2008). Cameron (2008, p.135), highlights the relevance of the Justice Dialogue, which 'as a whole is viewed as very productive' on both sides of the Atlantic.

⁵ The EU's body for European judicial co-operation

Another important dialogue is the PDBTS, which was set up in the aftermath of some very public concerns surrounding the securitisation of customs co-operation and the cancelling of several flights to the US at Christmas 2003 amid security concerns (Cameron 2008, pp.137-138). Since then, this dialogue has gone from strength to strength, and 'it has garnered a reputation as a success' (Cameron 2008, p.138). This dialogue enabled the EU and US to discuss issues before they arose, created informal contacts between officials on both sides of the Atlantic, and established and reinforced the position of the Commission and the new US Department of Homeland Security (DHS) in this area (Cameron 2008, p.140). The value of EU-US dialogues is therefore highlighted by their relevance and continuing expansion.

Air Security (PNR):

There have, so far, been three EU-US PNR agreements - two permanent agreements, PNR I and PNR III (2004 and 2007), and one interim agreement, PNR II (2006). The first PNR Agreement⁶ was conducted in the aftermath of 9/11 on the basis that the US was attempting to improve its border security. In short, the US requested that air carriers pass on certain types of their passengers to the US Customs and Border Protection Bureau (CBP) and Transportation Security Administration before departing for the US. In response to this, significant pressure was placed on the Commission to make an agreement with the US because of the penalties faced by air carriers if they did not pass on these data to US authorities (Argomaniz 2009; Brouwer 2009; Guild & Brouwer 2006). In addition, a possible PNR agreement contravened Article 25 of the EU's Data Protection Directive (DPD), which prevents the EU from transferring data to a country where there is not adjudged to be a sufficient level of data protection (European Parliament and European Council 1995). This placed air carriers in an invidious position. In 2004, the CBP originally requested thirty-nine types of data (Occhipinti 2010, p.127), but they received only nineteen in the 2007 agreement – though this was achieved by combining data categories and has been criticised for this (Brouwer 2009, p.13).

PNR I was annulled by the ECJ in 2006 because of an inappropriate legal base, after a challenge by the EP. To the EP, the PNR agreement should have come under the DPD and thus should be subject to the co-decision⁷ procedure (Pawlak 2009b). Due to the EP challenging the PNR I in the ECJ, the third round of negotiations took place on the basis of the second and third pillars, resulting in an agreement where the EP, ECJ, and Commission were sidelined by the lack of authority that supranational institutions could play in those pillars (remaining mostly intergovernmental at this time). The PNR is due to be voted on again in

⁶ There have been three PNR agreements between the EU and US. Two of the agreements (2004 and 2007) have been long-term and one was an interim agreement (2006)

⁷ When the EP has joint legal responsibility for legislation with the Council

2011 by the EP due to the expanded consent granted to the EP by the Lisbon Treaty.

Tracking Terrorist Financing (SWIFT):

The SWIFT agreement was first case where the EU had to work under the new post-Lisbon system. The US' Terrorist Financing and Tracking Programme (TFTP) was instigated by the US Treasury after 9/11 and SWIFT was obliged to co-operate with it because a mirror of its data was kept in Virginia. SWIFT is a Belgian, European-based company responsible for worldwide financial messaging and facilitating worldwide bank transfers (Fuster et al. 2008). In short, SWIFT is responsible for the standardised financial messages of 9,000 banking organisations, securities institutions and corporate customers in 209 countries (SWIFT Website 2010). Furthermore, and most importantly, SWIFT is responsible for about 80 per cent of the electronic transfer market (Deutsche Welle Website, August 2010). Crucially, these messages frequently include personal data of the payer and payee (Fuster et al. 2008, p.192).

TFTP had generally been kept fairly secret until it was leaked in the *New York Times* on 23 June 2006 that SWIFT had provided the US with access to bank data. It appears that this came as a surprise 'almost for everybody' (Fuster et al. 2008, p.194). A few years later, in 2009, SWIFT relocated the mirror of its data from the US to Switzerland – thus requiring the US to request data from Europe. From this, an EU-US agreement was made necessary.

Member states recognised the benefits of TFTP; for example, the US passed on over 1,500 leads to European governments, some of which have led to prevention of terrorist attacks and arrests (Archik 2010, p.5). An interim agreement (for nine months) was concluded by the Council on 30 November 2009, yet this agreement was rejected by the EP in February 2010. The EP took the opportunity to raise substantial concerns about the transfer of bulk data to the US, and also cited US coercion as a major reason of why they rejected the interim agreement.

The Commission was then forced to re-negotiate the SWIFT agreement. This second agreement was then accepted by the EP in July 2010. The new agreement was a little different to the first in several ways: first, the new agreement includes a role for Europol as a clearing house and to 'green light' the transfers of data. Furthermore, there is apparently⁸ a way for individuals to question and correct authorities who hold their data. Furthermore, and perhaps most interestingly, it was pointed out by one interviewee that this agreement

⁸ This, however, does not hold any weight because SWIFT is an executive agreement and therefore victims would not benefit from any kind of judicial review in the US (EDRI 2010).

involves the EU in intelligence gathering for the first time (Interview with EU Official A, Brussels, June 2010). In this way, it could be a key moment in the evolution of the EU.

Police and Judicial Co-operation:

Since 2001, Europol has become of increased importance in counter-terrorism (Kaunert 2010a; Mounier 2009). Europol and the US have now signed two agreements (2001 and 2002). The first was a strategic agreement (including threat tips, crime patterns, and risk assessments). The second was an operational agreement, which allowed the transfer of personal information (such as names, addresses, and criminal records) (Archik 2005, p.3). However, Occhipinti (2010, p.123) suggests that these links remain underutilised because of the US preference for using pre-existing bilateral ties.

Additionally, the MLA and Extradition Treaties were initiated by the EU after 9/11. On 20 September 2001, the EU's Justice and Home Affairs Council decided that a series of measures needed to be taken in order to enhance co-operation with the US in criminal matters. In an exchange of letters between the then Head of the European Council, Guy Verhofstadt, and President Bush, it was suggested that an agreement be made on penal co-operation with regard to terrorism (House of Lords 2003). On the basis of articles 24 and 38 TEU – where the conclusion of international agreements in (then) third pillar matters were allowed by the Council on a recommendation by the Presidency – an agreement was finalised in the spring of 2003. Even so, some member states were slow to implement the agreements (the agreement only came into force on 1 February 2010). However, most importantly, extradition to the US has been made possible for the first time with Bulgaria, Latvia, Malta, and Romania (Occhipinti 2010, p.115). The MLA agreement also updates previous bilateral agreements of this sort, but significantly, this represents the first MLA between the US and Bulgaria, Finland, Malta, Portugal, Slovakia, and Slovenia (Occhipinti 2010, p.115).

Trade Security:

The main concern here is the CSI, which was a US initiative started in 2002. The issue was that twelve million containers arrived in the US annually, and only two per cent of these were being thoroughly inspected. Thus, the potential for this weakness to be abused by terrorists was clear (Occhipinti 2010, p.125).

Initially, the US targeted the world's twenty busiest ports, which included fourteen ports in eight EU member states. The US made bilateral agreements with each country that US cargo would get its own terminal and that US officials would screen the containers side-by-side with their European counterparts (Occhipinti 2010). This led to the Commission opening proceedings against these member states because it potentially jeopardised the customs union, but

simultaneously, the Commission also attempted to seek a mandate for an EU-wide agreement with the US (Cameron 2008; Occhipinti 2010). An agreement was then signed in April 2004. A sticking point in these negotiations was the so-called 'twenty-four hour rule', which requires that EU ports grant twenty-four hours notice of the contents of a container which was US-bound, because the Commission considered that it pitted European ports against each other and distorted trade (Cameron 2008; Occhipinti 2010). These issues were resolved once it was found that most EU ports were in line with these regulations. There are now twenty-three CSI ports in ten EU member states (Occhipinti 2010, p.116).

It can therefore be observed that there is now a significant EU-US relationship in some areas of security. Also, this co-operation has reinforced the EU's authority in each area because of US interaction. It is clear that the EP's attempts to involve itself in the PNR Agreement, although proving to be counter-productive at the time, demonstrated an attempt to become more involved in international agreements, as well as showing an attempt to uphold certain European values – such as the right to data protection – in the face of US pressure and member state acquiescence. Interestingly, the Treaty of Lisbon has almost certainly ensured that a situation where the EP was sidelined – such as PNR – cannot happen again. Most interestingly of all, the EU is now involved in intelligence gathering by handing data to the US. This means that the EU is now involved in this most sensitive of matters, demonstrating its increased role in counter-terrorism in general. Clearly, these points show a huge leap forward for the EU as an international actor.

III) Autonomy:

This section will focus primarily on EU autonomy from external actors. In this case, two things will be examined: the influence of the US on the EU in security-related matters; and the increasing resistance of the EU to US demands and security practices.

How the US has Influenced the EU:

Between 2001 and 2009, it is clear that the EU-US relationship was not equal (Argomaniz 2009; Pawlak 2009a; Rees 2008). Firstly, the EU had to accept agreements that had been proposed and unilaterally decided by the US. Secondly, these agreements forced the EU into a position where it had to accept US security norms. With some of these agreements, the EU had to compromise on data protection, among other commonly-held values. It can clearly be seen that the US has typically been the one driving a lot of the co-operation, having forced the issue on PNR, CSI, and travel documents requiring biometrics.⁹

⁹ For more on biometrics see (Occhipinti, 2010).

With the PNR Agreement, the US was able to press the EU to accept a compromise by the fact that they put European airlines in a position where they had to break EU or US law. Therefore, by making this decision, the US pushed the EU into a position where it had to negotiate. In addition, the less stringent nature of the EU's PNR agreements with Australia and Canada suggests that the US was able to exert itself over the EU more than other actors (European Parliament 2007a). The EP specifically regretted the fact that EU-US negotiations took no account of the PNR agreements with Canada and Australia 'which ensure higher standards of protection of personal data' (European Parliament 2007a). Many MEP's remain unhappy with the PNR agreement, and it will be interesting to see what the EP does when it votes on the issue later this year.

Overall, it appears that the US has been able to push the EU to accept its security norms in many policy areas. This, however, paints too simplistic a picture of EU-US co-operation because acceptance of US security methods was not simply due to US influence. For instance, Spain and the UK have long been advocates of increased security co-operation at EU-level due to their histories (Rees 2008). Furthermore, at very least, all member states have been reluctant to clash with the US (Monar 2010). Hence, it seems that between 2001 and 2009, the US got much of what it wanted. But this spell of US dominance in negotiations may have changed with the SWIFT agreement. When the EP rejected the SWIFT agreement it came as a surprise to the US (Interview with EU official B, Brussels, July 2010). They had adopted a coercive attitude towards the EU at first which is possibly indicative of the fact that the US was used to getting its own way on these issues. Thus, for the first time, the US had been really challenged on an agreement and had to make some concessions, as well as adopting a less forceful posture – and this on an issue that the US considers integral to their homeland security.

How the EU has opposed the US:

SWIFT is important in establishing an increased EU resistance to US security policies. The US made several threats to the EP should they not pass the agreement in February 2010 – among them was the possibility that they might make a bilateral agreement with each member state (Monar 2010, p.145). There would, however, have been serious consequences of such an action. By negotiating a separate agreement with each member state, the US would have opened itself up for a lengthy negotiation process. Additionally, the US would have alienated the EP, which would have put the 2011 PNR agreement in jeopardy. Thus, the US cannot ignore the EP in future, and it must work harder to get its support.

After the EP's rejection of SWIFT at first reading, the US position towards the EP changed substantially from coercive to one of encouragement. In this regard, the US invited several of the EP's LIBE (Civil Liberties, Justice, and Home Affairs)

Committee to go to the US where various aspects of the agreement were discussed (EurActiv.com 2010b). This invitation appears to have flattered the MEPs and given them a new importance that they did not previously have. Additionally, the US Vice-President, Joe Biden, visited the EP for the first time in May 2010. This was the first time that a US Vice-President or President had visited the EP since 1985 (European Parliament Website 2010), which is perhaps indicative of the increasing importance of the EP in EU-US relations.

Although the SWIFT agreement signals only a rejection of US policies, it is an important event for the EU because it shows that the EP can oppose the US under significant pressure. Importantly, one MEP stated that they wanted member states to show 'more of a backbone' when dealing with the US (Interview with MEP, Brussels, July 2010). Also, the EP's increased confidence when dealing with the US, as well as the baggage from the PNR agreement, may lead the EP to expect concessions from the US in future. The EP was keen to delay a vote on PNR from 2010 until 2011 so that it could create some basic standards on what it expected as regards data protection (European Parliament 2010a). This, however, also needs to be put into context; the change in Administration from Bush to Obama almost certainly had an impact on the way US foreign policy was conducted. Even so, the US may have learnt not to dismiss the EU, and specifically the EP, in future. The EP has forced the US to take the EU more seriously and made the US more aware of genuine European concerns. But the EU influence cannot be overplayed because the US still got the agreement it wanted with a few substantial concessions¹⁰, and it could have been catastrophic for the transatlantic relationship had the vote failed on its second reading. Furthermore, some MEPs are still unhappy with the new SWIFT agreement, and it has been criticised for being as bad as the first (EDRI 2010). In this case, SWIFT could be a milestone, but there is a long way to go before the EU can be considered fully autonomous from both its member states and the US. Admittedly, these are harsh criteria by which to judge the EU, but the EU continues to punch beneath its potential weight in its relations with the US in general because of the pro-US and pro-security sentiment of some member states - or at very least the general unwillingness of member states to clash with the US.

IV) Cohesion:

Two issues are important here: the cohesion demonstrated by the member states and the EU institutions.

Member State Cohesion:

Occhipinti (2010, p.121) has argued that 'the interaction of the European Union (EU) and the United States US) on 'internal security'... is notable for agreement

¹⁰ For text of the final SWIFT Agreement, refer to (European Union 2010)

and co-operation, rather than discord'. To explain this, it is necessary to discuss the role of the Council and how the member states interact with the US through the EU. In this regard, there has to be a certain level of trust and co-operation within EU member states for cohesion to be said to exist.

Cohesion within the EU towards the issue of terrorism does not exist. Many countries have escaped major outbreaks of terrorism (Rees 2008). Also, Bures (2010) has shown that terrorism splits opinion within Europe. Even so, events such as Madrid in 2004 and London in 2005 certainly helped increase cohesion within Europe, and commitment to fighting terrorism within Europe has certainly grown over time (Spence 2008). However, terrorism is not the only issue that creates cohesion here. Many other issues can cause actors to interact with each other. Firstly, Gordon (2003, p.83) has demonstrated, 'no two regions of the world have more in common nor have more to lose if they fail to stand together in an effort to promote common values and interests around the globe. Now is not the time to start pretending that either the United States or Europe can manage on its own'. In this very basic sense, the EU institutions, its member states, and the US all act to combat terrorism and the threats that overlap terrorism, which takes into account a nexus of crime and terrorism (Clarke & Lee 2008; Hutchinson & O'Malley 2007) and a series of other threats. Also, attacks on Europe have driven European countries to do more, and hence there has been an element of policy convergence with the US (Occhipinti 2010). Terrorism, and the threats surrounding it, has come to be considered more of a threat to Europe, as well as all the issues that underlie it – including drugs, crime etc – as outlined in the European Security Strategy (ESS) (European Council 2003). In this sense, there is an element of value cohesion (Jupille & Caporaso 1998) between most EU member states and the US.

Thus, in some ways the EU-US relationship has actually pulled closer together over time. This has been partly a product of US influence on EU member states and also a willingness of the EU member states to support the US - even through turbulent times. Furthermore, many EU member states consider the US to be an important partner for ensuring their security (Aldrich 2009; Argomaniz 2009). However, several EU member states have not always been comfortable with US security requests, but their support of continuing EU-US relations is based upon no EU member state wanting to clash with the US – as highlighted by SWIFT (Monar 2010). In sum, both sides have profited from EU-US relations (Kaunert 2010b). This co-operation seems to strengthen more over time.

The Role of the EU Institutions:

Probably the greatest issue within the EP when considering EU-US relations is the issue of data protection. This has become apparent in numerous documents (European Parliament 2007a, 2007b, 2009, 2010b). On the one hand, the EU has generally maintained a tradition of strong data protection controls, whereas

the US has tended to be much more *laissez-faire* (Hailbronner et al. 2008). The problem arises when the European and US cultures intersect, and data protection comes into play when considering various information sharing agreements between the EU and US (PNR, SWIFT, Europol-US) (Hailbronner et al. 2008). According to Stevenson (2003, p.84), 'Washington has come to regard European fastidiousness about data protection as a serious obstacle to counter-terrorism'. As mentioned before, the US notoriously fails Article 25 of the DPD, and a further problem was that it did not provide any sort of solution to the problem of fluid transatlantic data transfers (Fuster et al. 2008). Data protection continues to cause problems in agreements between the EU and US.

Evidence of the EP's preference for strong data protection is clear in most EU-US counter-terrorism related agreements. The EP's request that the first (2004) PNR agreement come under the DPD, as well as the rejection of the first SWIFT agreement – due partly to data protection concerns regarding bulk data transfer to the US for processing – highlight this. The EP, in fact, has generally been sceptical about norm-'internalisation' from the US (Argomaniz 2009). This, in many ways, is at odds with the member states, who have often been keen to let the US do member states dirty work (Aldrich 2009; Argomaniz 2009).

Although the EP has frequently appeared concerned about data protection, it also recognised the need not to jeopardise the member states' security and the EU-US relationship as a whole during the second vote on SWIFT. Thus, after the Lisbon Treaty, the EP may also have to be more compliant. To demonstrate this, the EP turned on its traditional stance during the SWIFT agreement. Also, MEPs have long spoken of their desire to make personal contacts with Congress, and any rejection of US policies therefore automatically impedes this (European Parliament 2007b). In this sense, cohesion is again created by a willingness to be involved in policy.

Conclusion:

Before 2001 the EU was not a counter-terrorism actor. The attacks on the US, the subsequent US influence, and internal institutional development within the EU catapulted the EU into unfamiliar territory. In addition, the member states saw it as necessary to pool certain aspects of their sovereignty in response to the challenges posed by international terrorism.

Before 2001, the EU and US had made vague commitments to co-operate on matters pertinent to security. These led to various dialogues, but nothing concrete. The catalyst to increase this co-operation came in the form of 9/11, which caused the US to request much closer co-operation with the US. The US then chose to negotiate several important agreements with the EU that bound all the EU member states, which was evidently preferable to negotiating with (now) twenty-seven different partners. For the EU, the agreements of the post-2001

period represented US recognition of the EU as a serious international security actor – agreements that were motivated by counter-terrorism. In this sense, the EU benefited from US recognition for the first time, but it could also potentially be seen as a negative influence in the sense of adopting US security measures. US recognition of the EU has therefore grown significantly since 2001.

Consequently, the EU has come to be an important player in counter-terrorism. Clearly, agreements such as PNR helped to create and consolidate the role that the EU could play in a specific policy area. In addition, new responsibilities were established on the basis of EU-US agreements. For instance, SWIFT demonstrates how the EU is now involved in intelligence gathering. Furthermore, the dialogues that had existed before 9/11 were rejuvenated after 2001 and new dialogues also sprung up. The Treaty of Lisbon has enabled the EU's institutions to have an expanded role in EU decision-making, and the EP's requests for concessions in the SWIFT agreement highlights this. In future, it will be interesting to see how the EP's role develops – particularly with the new PNR agreements due later in 2011. This shows the authority created by EU-US agreements and by treaty change within the EU.

Clear throughout the paper is that US influence has been vital to the EU's evolution into becoming a more important counter-terrorism actor. Without this influence, the EU would not have made the giant leaps that it has made since 2001. However, US influence has been both positive and negative. On the one hand, the EU has become a more important actor in the field of security. On the other hand, US influence has ensured that the EU has adopted security practices that have not necessarily fit comfortably with European threat perceptions. This asks serious questions of the EU's autonomy as an actor, but institutional change within the EU also holds possibilities for the EU to become more autonomous.

Even so, it is not only US influence that has caused the EU to become more active in the counter-terrorism context. Member states have played a significant role. In addition to the US becoming more concerned about terrorism, EU member states also realised that their integration had also meant that security had become an area of increasing interdependence. Thus, member states were also at least a little more open to co-operation at EU level. Some member states, such as the UK and Spain had already put emphasis on security co-operation at the EU due to their respective histories. Furthermore, these states were more sympathetic to the US and are more pro-Atlanticist in outlook.

However, in the light of changes made by the Lisbon Treaty and with the evidence of the SWIFT agreement, it seems possible that the EP may attempt to extract greater concessions from the US in future. Institutional changes have brought a new actor and a new set of interests into the policy-making process -

one that has traditionally looked to protect fundamental rights. On the other hand, there are factors - such as a desire to remain involved in policy-making and therefore the need to avoid riling the member states - that may require the EP to compromise on its traditional policy preferences.

Interestingly, there are signs that the EU may finally be creating its own security policies. There is potential in this sense through the creation of both a European TFTP set out in the SWIFT agreement and a European PNR set out in the draft EU Internal Security Strategy (Council of the European Union 2010a; European Union 2010). These are, for now at least, confined to being vague aspirations on EU documents and another - perhaps greater - concern is that they appear to be re-packaged US policies. In this sense, however, it is yet to be seen how these turn out.

In terms of cohesion, it is quite clear EU member states do not all see the threat of terrorism the same way. Even so, it is clear that many EU member states desire to combat terrorism has grown. If nothing else, unwillingness to clash with the US has pushed EU member states to agree on certain issues that would not otherwise have been passed. Regardless of the disagreements between the transatlantic partners, co-operation has continued and has only got stronger.

In terms of the cohesion of EU institutions, the EP's role was - at least in the past - that of prioritising data protection, and in that sense, it is probably the institution least likely to agree with the US. In addition, the member states may be inclined to sideline the EP if they do not feel that the EP is behaving itself. But both a desire to be involved and a fear of being sidelined will force the EP to act more in line with the member states, which is potentially either a positive or a negative depending on perspective.

In short, the EU is 'light years' (Spence 2008, p.2) ahead of where it was in 2001. As regards the EU's overall actorness in counter-terrorism, the EU needs to be studied for what it is; taking into account what it can and cannot do, but it is safe to say that the EU of 2011 is a far more important counter-terrorism actor than that of 2001. In the case of the US, the EU has come a long way as an actor since 2001.

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